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Attorneys for Plaintiff  
BROCADE COMMUNICATIONS SYSTEMS, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE BROCADE COMMUNICATIONS  
SYSTEMS, INC. DERIVATIVE LITIGATION

This Document Relates to:

ALL ACTIONS

Case No. C 05-02233 CRB

**STIPULATION AND ~~[PROPOSED]~~ ORDER  
AMENDING SECOND AMENDED  
COMPLAINT BY DISMISSING TWO CAUSES  
OF ACTION AS TO DEFENDANTS NEAL  
DEMPSEY AND SETH D. NEIMAN**

**STIPULATION AND ~~[PROPOSED]~~ ORDER AMENDING  
SECOND AMENDED COMPLAINT BY DISMISSING TWO  
CAUSES OF ACTION AGAINST DEMPSEY AND NEIMAN**

WHEREAS, on August 1, 2008, Brocade Communications Systems, Inc. (“Brocade” or the “Company”), by and through the Special Litigation Committee of Brocade’s Board of Directors (the “SLC”), filed a Second Amended Complaint in this action (Dkt. No. 220); and

WHEREAS the Second Amended Complaint asserts against defendants Neal Dempsey and Seth D. Neiman (and other defendants) causes of action for, *inter alia*, “Breach of the Fiduciary Duty of Loyalty – Self Dealing” (the “Sixth Cause of Action”) and “Unjust Enrichment” (the “Eleventh Cause of Action”); and

WHEREAS the SLC has decided not to pursue the Sixth Cause of Action and the Eleventh Cause of Action against defendants Dempsey and Neiman; and

WHEREAS Federal Rule of Civil Procedure 15(a)(2) permits a party to amend an amended pleading “only with the opposing party’s written consent or the court’s leave”;

NOW, THEREFORE, the parties to this Stipulation agree as follows:

Pursuant to Federal Rule of Civil Procedure 15(a)(2), the Sixth Cause of Action and Eleventh Cause of Action shall be and are dismissed without prejudice solely as to defendants Neal Dempsey and Seth D. Neiman.

1  
2 Dated: September 26, 2008

DEWEY & LEBOEUF LLP

3  
4 /s/ Peter E. Root

Peter E. Root  
Attorneys for Plaintiff Brocade Communication  
Systems, Inc.

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8 K&L GATES LLP

9 /s/ Jeffrey L. Bornstein

10 Richard M. Phillips  
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14 DORR LLP

15 /s/ Jonathan A. Shapiro

16 Michael A. Mugmon  
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Jeffrey B. Rudman  
Attorneys for Defendant Seth D. Neiman

**ATTESTATION PURSUANT TO GENERAL ORDER 45**

I, Peter E. Root, attest that concurrence in the filing of this document has been obtained from the other signatories. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 26th day of September 2008 at East Palo Alto, California.

Dated: September 26, 2008

DEWEY & LEBOEUF LLP

/s/ Peter E. Root

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Attorneys for Plaintiff  
BROCADE COMMUNICATIONS  
SYSTEMS, INC.

~~PROPOSED~~ ORDER

Upon Stipulation of the Parties and good cause appearing therefor, IT IS SO ORDERED.

Dated: October 1, 2008

